

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

FEDERAL TRADE COMMISSION,
STATE OF CALIFORNIA, STATE OF
COLORADO, STATE OF ILLINOIS,
STATE OF INDIANA, STATE OF IOWA,
STATE OF MINNESOTA, STATE OF
NEBRASKA, STATE OF OREGON,
STATE OF TENNESSEE, STATE OF
TEXAS, STATE OF WASHINGTON, and
STATE OF WISCONSIN,

Plaintiffs,

v.

Syngenta CROP PROTECTION AG,
SYNGENTA CORPORATION, Syngenta
Crop Protection, LLC, and Corteva, Inc.,

Defendants.

Case No. 1:22-cv-00828-TDS-JEP

**PLAINTIFFS' MOTION TO
COMPEL DISCOVERY OF
ATTICUS, LLC**

Pursuant to Federal Rules of Civil Procedure 34(c) and 45(d)(2)(B)(i), Plaintiffs respectfully move this Court for an order compelling non-party Atticus, LLC ("Atticus"), to produce data responsive to Request Nos. 3 and 6 of Plaintiffs' April 29, 2024, Rule 45 subpoena no later than January 22, 2025; to propose a search methodology and production schedule for the remaining subpoena requests within forty-eight (48) hours of entry of the proposed order; and to substantially comply with the subpoena by February 28, 2025. In support of their motion, Plaintiffs state as follows:

1. Plaintiffs' Rule 45 subpoena (Ex. A) issued on April 29, 2024. Plaintiffs served the subpoena on Atticus that same day, by email pursuant to agreement with Atticus. *See* Ex. D (April 29, 2024, Email from M. Turner).¹

2. In its 2024 Limited Liability Company Annual Report filed with the North Carolina Secretary of State, Atticus listed its principal place of business as 940 NW Cary Parkway, Suite 200, Cary, NC 27413. *See* Ex. H (Atticus Annual Report). Plaintiffs' subpoena thus calls for compliance at "a place within 100 miles of Cary, NC, as agreed upon by counsel," inclusive of places falling within this District. Ex. A. Atticus has not expressed a preference for a particular physical place of compliance and has not indicated to Plaintiffs that it will make any physical productions.

3. Atticus served responses and objections to Plaintiffs' subpoena May 28, 2024, following an extension that Plaintiffs granted at Atticus's request. *See* Ex. B.

4. On June 4, 2024, Plaintiffs and Atticus conferred via videoconference regarding Atticus's response to the subpoena. Atticus stated that it was taking a "belt-and-suspenders" approach to its objections and indicated that it was not then able to propose a search methodology or a production schedule. *See* Declaration of Michael Turner; *see also* Ex. C (June 5, 2024, Letter from M. Turner to M. Dowd). Plaintiffs requested a follow-up discussion on those topics, via videoconference, by emails sent on June 24, 2024; July 1, 2024; July 15, 2024; July 30, 2024; August 16, 2024; August 21,

¹ The cited exhibits are attached to the Declaration of Michael Turner filed with Plaintiffs' Memorandum In Support of Their Motion To Compel Discovery of Atticus, LLC.

2024; and August 29, 2024, and by numerous phone calls to Atticus’s counsel. Despite those efforts, Atticus did not agree to a follow-up videoconference. *See* Ex. D (Email thread re: “Subpoena to Atticus, LLC”); Certificate of Consultation, *infra*.

5. On August 14, 2024, Atticus informally produced an organizational chart to Plaintiffs via email. *See* Ex. D (August 14, 2024, Email from M. Dowd).

6. On September 12, 2024, Plaintiffs again asked Atticus for details regarding its plan for collecting and producing documents, and notified Atticus that Plaintiffs may need to take action to ensure reasonable compliance with the Subpoena. *See* Ex. D (September 12, 2024, Email from M. Turner).

7. In a September 16, 2024, letter, Atticus declined to provide Plaintiffs with the information they requested on September 12. Ex. F (Letter re: “Rule 45 Subpoena to Atticus, LLC”). Atticus stated only that it “expects to complete its productions long before” the April 22, 2025, close of fact discovery and the January 22, 2025, deadline for the parties to substantially complete document productions. *Id.* at 2. In the same correspondence, Atticus electronically produced to Plaintiffs nine Microsoft Excel files containing data responsive to only limited parts of Plaintiffs’ data requests. *Id.*

8. On September 30, 2024, Plaintiffs again asked Atticus for details regarding its plan for collecting and producing documents. Ex. E (September 30, 2024, Email from M. Turner). Plaintiffs also requested a proposed production schedule. *Id.*

9. Atticus did not respond to Plaintiffs’ September 30, 2024, request.

10. On October 31, 2024, this Court ordered the parties to conclude negotiations with nonparty subpoena recipients by December 2, 2024.

11. On November 22, 2024, pursuant to Federal Rule of Civil Procedure 45(d)(2)(B)(i), Plaintiffs served notice on Atticus of their intent to move for an order compelling Atticus's compliance with the subpoena, by email pursuant to agreement with Atticus. Ex. G (November 22, 2024, Email from M. Turner).

12. On November 25, 2024, Plaintiffs and Atticus conferred via videoconference regarding Plaintiffs' motion to compel. *See* Ex. G (Nov. 25, 2024, Emails). During that videoconference, as memorialized in the subsequent emails between Plaintiffs and Atticus, Plaintiffs agreed to "hold off on filing" their "planned motion to compel" in return for Atticus's promises (1) "to provide a reasonable description of its plan to collect and review responsive documents" by December 20, 2024, and (2) to "produce data responsive to [Plaintiffs'] Request Nos. 3 and 6 by January 22, 2025." *Id.*

13. Atticus has not adhered to its commitment.

14. On January 7, 2025, pursuant to Rule 45(d)(2)(B)(i), Plaintiffs served by email notice on Atticus of their intent to move for an order compelling Atticus's compliance with the subpoena. Ex. G (January 7, 2025, Email from M. Turner).

15. The grounds for Plaintiffs' motion are set forth in the contemporaneously filed memorandum of law in support of this motion. Undersigned counsel includes a certificate of good faith conference and attempts to resolve this matter, in compliance with Local Rule 37.1(a).

Dated: January 7, 2025

Respectfully submitted,

/s/ Michael J. Turner

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CERTIFICATE OF CONSULTATION

I hereby certify pursuant to Local Rule 37.1(a) that after personal consultation and diligent attempts to resolve differences, Plaintiffs and non-party Atticus, LLC, are unable to reach agreement on the issues subject to this motion. Plaintiffs and Atticus conferred via videoconference on June 4, 2024, and on November 25, 2024, regarding the records called for by the subpoena. Atticus refused multiple requests for videoconferences between June 4 and November 25, including requests Plaintiffs made via email on June 24, 2024; July 1, 2024; July 15, 2024; July 30, 2024; August 16, 2024; August 21, 2024; and August 29, 2024, and by numerous phone calls to Atticus's counsel. Attorneys who participated on behalf of Plaintiffs included Michael Turner, Lauren Patterson, and Robert Chen. Attorneys Matthew Dowd and Elliot Gee participated on behalf of Atticus.

Dated: January 7, 2025

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